



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 98 OF 2022

Usman Khan Rashid Khan Pathan,
Age : 75 Years, Occ. Business,
R/o. City S No. 2537, Lane No.2,
Near Ghadiya Masjid, Moulviganj,
Dhule.

..Applicant
(Orig. Defendant)

VERSUS

Vishal Plot Vikrikendre,
Bhagidari Sanstha Tarfe
Partner Shree Vishal Chandrakant
Kele, Age : Major, Occ. Business,
Office Add. Dinesh Complex,
Agra Road, Dhule.

.. Respondent
(Original Plaintiff)

...

Ms. Madhaveshwari Mhase Advocate i/b
Shri. Parikshit S. Mantri, Advocate for Applicant.
Ms. Priya S. Gondhalekar, Advocate for Respondents

....

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : September 19, 2024.**

JUDGMENT :

1. An exception is taken to the order passed by learned 3rd Civil Judge, Senior Division Dhule, i.e. the learned trial Court on 29.06.2022 below (Exh.15) in Special Civil Suit No. 150 of 2022, by the present applicant, who is defendant in the aforesaid suit. Under the impugned order, the application (Exh.15) filed by the applicant/defendant under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint has

been rejected.

2. The present respondent i.e. original plaintiff has filed the aforesaid suit for specific performance of agreement to sale. It is contended that in the year 1988, the applicant as well as Ashrafbi Rshid Khan Pathan had decided to sell the suit property mentioned in the plaint to the erstwhile partner of respondent/plaintiff Firm. The defendant had agreed to sale the suit property for consideration of Rs. 2,07,000/- under the agreement of the sale and certain part of the said consideration was also paid by Chandrakant Kele vide cheque bearing No. 607008. The defendant applied for necessary permission for change of user of the land and to sell the same in favour of Chandrakant Kele. Thereafter, on 01.12.2021 a fresh agreement to sale was executed between the plaintiff and the defendant, but the defendant thereafter deliberately refused to execute the sale deed and therefore, the aforesaid suit was filed by the respondent Firm. In the said suit the applicant/defendant filed application for rejection of the plaint below (Exh.15) which was replied by respondent/plaintiff and thereafter the learned trial Court rejected the aforesaid application vide impugned order and hence this Civil Revision Application.

3. The learned counsel for the applicant vehemently submitted that the learned trial Court has definitely erred in rejecting the application for rejection of the plaint. According to her, there is bar for filing the present suit as per Section 69 of the Indian Partnership Act, 1932 as the person who filed the present suit i.e. Vishal Chandrakant Kele was not a partner of the Firm and therefore, as per Section 69 of the Indian Partnership Act, he could not have filed the present suit. According to her, though the suit is filed on 08.03.2022, but at the relevant time Vishal Kele was not partner of the respondent/Firm. In support of her contention she relied upon the Judgment in the case of **M/s Shreeram Finance Corporation Vs. Yasin Khan and others** reported in **AIR 1989 Supreme Court 769**.

4. On the contrary, the learned counsel for respondent/Firm strongly opposed the submissions made on behalf of the applicant by filing two affidavits-in-reply. She came with the case that Deeds of re-constitution of Firm of the year 2001 and 2020 were already placed on record along with the plaint on the very day of its filing, wherein it was clearly mentioned that Vishal Kele, who has filed the suit, was already inducted as a partner. She also filed necessary documents mentioning the name of Vishal Kele as a partner of

the respondent/Firm on record, as directed by this Court. In the alternative, she submitted that even if it is presumed that Vishal Kele was not partner of the said Firm, but under the common law, for filing suit for specific performance of contract, there cannot be any bar under Section 69 of the Indian Partnership Act. She also relied on the following judgments :-

- (i) ***Gwalior Oil Mills Vs. Supreme Industries* AIR Online 1999 SC 773**
- (ii) ***Shiv Developers Through its Partner Sunilbhai Somabhai Ajmeri Vs. Aksharay Developers & Others* in Civil Appeal No. 785 of 2022 (Arising out of SLP (C) No.20262 of 2018)**
- (iii) ***Haldiram Bhujawala And Another Vs. Anand Kumar Deepak Kumar And Another* (2000) 3 Supreme Court Cases 250.**

5. Heard rival submissions and also perused the documents on record along with the citations relied upon by either of the parties.

6. It is significant to note that the other particulars in respect of dispute between the parties are not subject matter of the application for rejection of the plaint. The application for rejection of the plaint is filed by the applicant/defendant only in view of bar under Section 69 of the Indian Partnership Act which reads as under :-

“ Section 69- Effect of Non Registration. - (1)
No suit to enforce a right arising from a contract or conferred by this Act shall be

instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suits to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect, -

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) The Section shall not apply, -

(a) to firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of

business in the said territories are situated in areas to which, by notification under Section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in Section 19 of the Presidency Small Cause Court Act, 1882 (5 of 1882) or, to outside the Presidency-towns, is not a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

7. The application for rejection of plaint is moved by contending that Vishal kele, who filed the suit on behalf of the respondent Firm, was not a partner of the said Firm on the date of filing of the suit.

8. Admittedly, in the case of ***M/s Shreeram Finance Corporation Vs. Yasin Khan and others (supra)*** relied upon by the applicant, it is observed that suit by a partnership firm is not maintainable if the person filing suit on behalf of the said firm is not shown as partners in the register of the firm on the date of suit. However, in the instant case, the plaintiff Firm had already filed Deeds of Reconstitution of the year

2001 and 2020 at the time of filing the suit. On perusal of the same, it appears that under the Deed of Reconstitution of 01.04.2001, Vishal Chandrakant Lad (Kele) was inducted in the said Firm as partner. It is not disputed that the said Partnership Firm was in existence much prior to filing of the suit. Further, under the Deed of Reconstitution of 1st April 2020, wife of Vishal Kele Mrs. Snehal was also inducted as a partner and under the Deed of Reconstitution of partnership dated 01.12.2020, there remained only two partners Mr. Vishal Chandrakant Kele and his wife Snehal as earlier partners Chandrakant Kele and his wife Lata expired in the year 2020 within short interval, due to Covid. The document list dated 08.03.2022 produced on record, clearly indicted that these Deeds were filed along with the suit. Thus, from those Deeds it has been made sufficiently clear that Vishal Kele, who filed the present suit, was partner to the respondent Firm.

9. Not only this, but the respondent Firm has also filed copy of certificates issued by Registrar of Firm wherein entry of Vishal Chandrakant Kele as a partner of the Firm w.e.f. 31.03.2001 is taken by Assistant Registrar of Firms, Aurangabad. The learned counsel for the applicant pointed out that the date of said entry is 21.06.2024 and submitted

that the entry of Vishal Kele was not there in the certificate of Registrar of Firm and therefore, the said entry showing him as a partner has been taken belatedly for filling up the lacuna. Admittedly, the certificate shows that entry of Vishal Kele in the Register of Firms is made after filing of suit but w.e.f. 31.03.2001 by the concerned Assistant Registrar. In the instant suit, we are not dealing with such action of Assistant Registrar in respect of taking entry of Vishal Kele with retrospective effect. What is there as per the said certificate is that Vishal Kele was shown as a partner in the certificate of Registrar of Firms on the date of filing of the suit. The Hon'ble Supreme Court in the case of **Gwalior Oil Mills Vs. Supreme Industries AIR Online 199 SC 773** (supra) relied by the respondent/firm has made following observations :-

"8. From the facts enumerated above, it is not in dispute that the firm M/s Gwalior Oil Mills was registered with the Registrar of Firms originally on 29-07-1953. With the passage of time, the firm was reconstituted and as required by section 63 of the Partnership Act, 1932, changes in the constitution of the partners was recorded with the Registrar of Firms. The said Section requires notice to be given to the Registrar whenever there is a change in the constitution of the firm and that notice is required, inter alia, to specify the date from which the changes have occurred and it is on the said notice being given

that the Registrar carries out the act of recording the change in the constitution of the firm. In the instant case, the application under Section 63 was filed on 23.08.1976 but the Registrar made the changes only on 28-02-1978 it however, recorded that the partnership had been reconstituted w.e.f. 1-1-1976.

9. The implication of the registration so granted clearly was that the reconstituted partnership firm came into existence w.e.f. 1-1-1976. In any case, the firm of M/s Gwalior Oil Mills never ceased to be a registered partnership firm. The suit was filed by the firm in 1977 and the partner who filed the plaint, namely Arvind Naranji Patel was admittedly a partner in the firm in his individual capacity and then as a Karta of his Hindu undivided family. Even if the reconstitution of the firm is ignored, it cannot be said that on 26-05-1977, the registered firm was not in existence."

10. On the basis of the aforesaid observations, it is clearly evident that when the entry of name of Vishal Kele as a partner in the certificate of Registrar of Firms is made with effect from earlier date prior to the filing of the suit, then there cannot be any bar under Section 69 of the Indian Partnership Act. Further, it is also clarified by the Hon'ble Apex Court in the aforesaid case that action of Registrar of Firms was not material though it was belatedly taken. Therefore, the

submission that Vishal kele acted fraudulently to fill up the lacuna by inserting his name in the certificate of Registrar of firms belatedly, is having no force.

11. Even otherwise also, the Hon'ble Apex Court in the recent judgment in the case of **Shiva Developers Vs. Ashray Developers** (supra) has made following observation

"to attract the bar of Section 69 (2) of the Act of 1932, the contract in question must be the one entered into by firm with the third party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings and that Section 69(2) of the Act of 1932 is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of statutory right or a common law right".

12. In the instant matter, admittedly the business of respondent/plaintiff Firm is of dealing in the property and therefore, suit filed by the plaintiff Firm to exercise its statutory right of specific performance of the disputed contract with the present applicant being a third party, can be said to be filed in the course of business dealings of the Firm. Therefore, even otherwise also, there is no bar for filing the present suit by Vishal kele even in absence of his

name in the certificate of Registrar of Firm at the relevant time. Therefore, on both the counts the application for rejection of the plaint is not tenable and therefore, there is absolutely no need to interfere with the impugned order. Resultantly, the Civil Revision Application stands dismissed and accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni/